

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LEON LEE MEYERS,

Plaintiff,

v.

SCOTT KERNAN, et al.,

Defendants.

No. 1:22-cv-00539-ADA-SAB (PC)

ORDER DENYING PLAINTIFF'S MOTION
FOR APPOINTMENT OF COUNSEL,
WITHOUT PREJUDICE

(ECF No. 45)

Plaintiff is proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's motion for appointment of counsel, filed November 3, 2023. Plaintiff seeks counsel because he is unable he is without funds, incarcerated, the issues are complex, and he will need to conduct discovery and interview witnesses.

Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

Without a reasonable method of securing and compensating counsel, the court will seek volunteer counsel only in the most serious and exceptional cases. In determining whether "exceptional circumstances exist, the district court must evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the

1 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

2 In the present case, the court does not find the required exceptional circumstances. Even
3 if it assumed that plaintiff is not well versed in the law and that he has made serious allegations
4 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with
5 similar cases almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to
6 his pro se status and his incarceration, the test is not whether Plaintiff would benefit from the
7 appointment of counsel. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most
8 actions require development of further facts during litigation and a pro se litigant will seldom be
9 in a position to investigate easily the facts necessary to support the case.”) The test is whether
10 exception circumstances exist and here, they do not. The Court has considered Plaintiff’s request,
11 but does not find the required exceptional circumstances. Even if it is assumed that Plaintiff has
12 made serious allegations which, if proved, would entitle him to relief, his case is not exceptional.
13 This Court is faced with similar cases filed almost daily by prisoners who are proceeding pro se
14 who must obtain discovery, research complex legal issues, and gather witnesses. These plaintiffs
15 also must litigate their cases without the assistance of counsel.

16 In addition, based on a review of the record in this case, the Court does not find that
17 Plaintiff cannot adequately articulate his claims. Plaintiff is able to prepare and file documents
18 clearly setting forth his contentions, without assistance from counsel. Furthermore, although the
19 Court screened Plaintiff’s third amended complaint and found that it stated a cognizable claim
20 that is proceeding in this action, this does not necessarily indicate a likelihood of success on the
21 merits. Accordingly, Plaintiff’s motion for appointment of counsel is denied, without prejudice.

22
23 IT IS SO ORDERED.

24 Dated: November 6, 2023


UNITED STATES MAGISTRATE JUDGE